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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.629 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RAMESHBHAI SATISHBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 629 of 1997
MR US BRAHMBHATT for Appellant
MR IM PANDYA, APP for Respondent
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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 11/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the

Code of Criminal Procedure, 1973 is directed against judgment dated June 26, 1997 rendered by the learned Additional City Sessions Judge, Court No.26, Ahmedabad, in Sessions Case No.49 of 1997 by which the appellant is convicted of the offence punishable under Section 302 of Indian Penal Code ("IPC" for short) and sentenced to suffer R.I. for life.

2. Complainant Mohmed Aslam Mohmed Abbas Ansari is residing in Haji-Nu-Dehlu, under Sarangpur Bridge, Sarangpur, Ahmedabad, and pursuing occupation of repairing embroidery machines. The incident in question took place on October 13, 1996. One-and-a-half month prior to the day of incident, his brother named Abdul Razak Mohmed Abbas was selling eatables in a lorry by parking it near gate of the Railway Station. Deceased Prakashbhai Shriramnathbhai was working for brother of the complainant. The complainant himself was also selling omelets in a lorry by parking it near the lorry of his brother. However, selling of eatables in the lorries was prohibited by the Ahmedabad Municipal Corporation, as a result of which, the deceased was rendered unemployed and was maintaining himself by doing labour work at the Railway Station. On October 7, 1996, the deceased approached complainant Mohmed Aslam and requested him to permit him to ply his lorry on hire. The complainant permitted the deceased to ply his lorry by charging Rs.25/- per day. Accordingly, the deceased was selling omelets in the lorry, which was being parked near the wall of Railway Computer Reservation Office. The deceased was starting his business at about 4.30 p.m. and closing the same by about 9.30 p.m. The goods stocked in the lorry belonged to the complainant and, therefore, after closing the business, the deceased used to bring the lorry with the goods to the house of the complainant and park there. On October 9, 1996, the deceased came to the house of the complaint to entrust the lorry with the goods and was accompanied by the appellant. To the complainant, the appellant appeared to be a loafer and the complainant, therefore, instructed the deceased not to bring such persons to his house.

2.1 As usual on October 13, 1996, the deceased took the lorry with the goods from the house of the complainant. At about 9.00 p.m., the complainant prepared to retire to bed, but at that time, his nephew Mohmed Rafik Abdul Razak knocked the door of his house and informed him that Prakashbhai was bleeding profusely. On hearing this, the complainant immediately came out of his house and found that Prakashbhai was sitting on road opposite R.K. Transport Company. The complainant

approached Prakashbhai and inquired as to what had happened. Thereupon, Prakashbhai informed the complainant that the person namely the appellant, who had accompanied him when he had earlier come to entrust the lorry with the goods, assaulted him by means of inflicting knife blows. The complainant found that the condition of injured Prakashbhai was serious and that he was bleeding profusely. Therefore, he engaged a rickshaw wherein he in the company of his mother Khatunbibi and brother Abdul Razak, removed injured to Emergency Ward of Shardaben Hospital. Injured Prakashbhai was treated by Dr. Rakeshkumar Parmanandsing, who informed Mr. Gavde, who was constable on duty at the hospital. Duty Constable Mr. Gavde, in turn, sent the information to Kalupur Police Station, which was recorded by PSO Mr. Umeshji Bhavansinh, and initially offences punishable under Section 307 IPC and Section 135 of the Bombay Police Act, 1951 were registered. After entering the information in the Register maintained at the Police Station, the same was conveyed to Mr. L. B. Purohit, who was then PSI of Kalupur Police Station. On receiving the information, Mr. Purohit proceeded to Shardaben Hospital and recorded complainant of Mohmed Aslam Mohmed Abbas Ansari. During the course of treatment, the injured succumbed to his injuries and, therefore, necessary information was conveyed to Kalupur Police Station, which was registered by PSO Mr. Umeshji Bhavansinh and offence punishable under Section 302 IPC was added to the First Information Report lodged by Mohmed Aslam. The Investigation into the case was made by PSI Mr. Purohit. The Investigating Officer held inquest on dead body of the deceased and drew panchnama of place of incident. He also made arrangement for sending dead body of the deceased to the hospital for postmortem examination. During the course of investigation, the appellant was arrested from Mumbai on November 25, 1996. After arrest of the appellant, a yadi was sent to Executive Magistrate to hold identification parade. Accordingly, identification parade was held on December 12, 1996 wherein the appellant was identified by complainant Mohmed Aslam Mohmed Abbas as well as witness Ramsing Shankersing Gode. While in custody, the appellant made disclosure statement pursuant to which, knife used by him in commission of offence was discovered. The incriminating articles which were seized during the course of investigation were sent to Forensic Science Laboratory for analysis. On completion of the investigation, the appellant was chargesheeted in the Court No.16 of the learned Metropolitan Magistrate, Ahmedabad, for commission of offence punishable under Section 302 IPC and Section 135 of the Bombay Police Act, 1951. As the offence punishable under Section 302 IPC is

exclusively triable by a Court of Sessions, the case was committed to City Sessions Court, Ahmedabad, for trial where it was numbered as Sessions Case No.49 of 1997.

3. The case was made over to the learned Additional City Sessions Judge, Court No.26, Ahmedabad, for trial, who framed charge against the appellant at Exh.1. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Mohmed Aslam Mohmed Abbas Ansari as P.W.-1 at Exh.6; (2) Khatunbibi Mohmed Abbas Ansari as P.W.-2 at Exh.7; (3) Abdul Razak Mohmed Abbas as P.W.-3 at Exh.8; (4) Ramsing Shankarsing as P.W.-4 at Exh.9; (5) Rameshkumar Sakharam Gavde as P.W.-5 at Exh.11; (6) Umeshji Bhavansinh as P.W.-6 at Exh.13; (7) Santoshsing Jangbahadursing as P.W.-7 at Exh.17; (8) Jayesh Shanitilal Kharchariya as P.W.-8 at Exh.19; (9) Suresh Savaji Prajapati as P.W.-9 at Exh.21; (10) Mohmed Tahir Abdul Rahim as P.W.-10 at Exh.23; (11) Yasinbhai M.Saiyed as P.W.-11 at Exh.25; (12) Irshadhusen Abdul Rahim Sheikh as P.W.-12 at Exh.27; (13) Gohil Ranjitsinh Virsingbhai as P.W.-13 at Exh.28; (14) Naransinh Bhavansinh as P.W.-14 at Exh.31; (15) Dr.Vindokumar Lajjaram Gupta as P.W.-15 at Exh.33; (16) Bhagwanbhai Hirabhai Parmar as P.W.-16 at Exh.35; (17) Laltaprasad Bhavarilal Purohit as P.W.-17 at Exh.37; and, (18) Dr.Rakeshkumar Parmanandsing as P.W.-18 at Exh.41 to prove its case against the appellant. The prosecution also produced documentary evidence such as entry made at Shahibaugh Police Station pursuant to information conveyed by Duty Constable at Exh.12; another entry at Exh.14; panchnama of place of incident at Exh.18; panchnama of person of injured who subsequently died at Exh.20; panchnama indicating seizure of bloodstained clothes of the complainant at Exh.22; panchnama indicating seizure of clothes of deceased at Exh.24; panchnama mentioning discovery of knife pursuant to disclosure statement made by the appellant at Exh.26; inquest report at Exh.27A; yadi sent to Executive Magistrate for holding identification parade at Exh.29; panchnama of identification parade at Exh.30; postmortem notes of deceased Prakashbhai at Exh.34; map of place of incident at Exh.36; complaint of Mohmed Aslam at Exh.38, certificate of injury of injured Prakashbhai at Exh.42, etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code

of Criminal Procedure, 1973. In his further statement, the case of the appellant was that of total denial and no defence evidence was adduced by him.

5. On appreciation of evidence led by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that deceased Prakashbhai Shriramnathbhai Bava died a homicidal death. The learned Judge held that evidence tendered by witness Mohmed Aslam and witness Abdul Razak established that deceased Prakashbhai had made oral dying declaration before them implicating the appellant as his assailant and the evidence regarding oral dying declaration adduced by the prosecution was satisfactory as well as reliable. It was also noticed by the learned Judge that part of the incident in question was seen by witness Ramsing Shankersing and his reliable evidence also established that the appellant was the author of injuries caused to the deceased. In view of abovereferredto conclusions, the learned Judge has convicted the appellant under Section 302 IPC and sentenced him to suffer R.I. for life by judgment dated June 26, 1997 giving rise to instant appeal.

6. Mr.U.S.Brahmbhatt, learned counsel of the appellant, contended that the evidence tendered by the prosecution regarding oral dying declaration made by the deceased is neither satisfactory nor reliable and, therefore, the same should not have been relied upon by the learned Judge of the trial Court for fastening criminal liability on the appellant. It was argued that the medical evidence on record establishes that the deceased had received injuries on vital part of his body and was bleeding profusely as a result of which, it is not probable that he would be in a position to make dying declaration before the two witnesses and, therefore, the evidence tendered by the prosecution regarding oral dying declaration should have been discarded by the learned Judge. What was claimed by the learned counsel of the appellant was that so-called eye witness Ramsing Shankersing is a chance witness and his unnatural conduct in not making attempt to save the deceased, makes his claim that he had witnessed the incident, highly doubtful and, therefore, the learned Judge was not justified in placing reliance on the testimony of the said witness for convicting the appellant under Section 302 IPC. It was pleaded that the identification parade was not held in accordance with law and, therefore, reasonable benefit of doubt to which the appellant is entitled to, should be accorded to him. According to the learned counsel of the appellant, the learned Judge of the trial Court has not

appreciated the evidence in its true perspective and, therefore, benefit of doubt should be given to the appellant by setting aside the impugned judgment.

7. Mr.I.M.Pandya, learned counsel of the State Government, contended that the evidence tendered by the prosecution regarding oral dying declaration made before witness Mohmed Aslam and witness Abdul Razak is not only satisfactory, but cogent as well as consistent and, therefore, it is wrong to contend that the learned Judge was not justified in placing reliance on the said evidence. It was pleaded that witness Mohmed Aslam and for that reason witness Abdul Razak were not ill-disposed towards the appellant and would not have named the appellant falsely if, in fact, his name had not been referred to by the deceased in his oral dying declaration as his assailant and, therefore, the reliable evidence led by the prosecution regarding oral dying declaration should be accepted by this Court. It was argued that apart from the evidence tendered by the prosecution regarding oral dying declaration, the prosecution has also produced direct evidence of witness Ramsing Shankersing, which establishes that the appellant had inflicted knife blows on the deceased and, therefore, well founded conviction of the appellant under Section 302 IPC should be upheld by this Court. The learned counsel of the State Government emphasized that cogent and convincing reasons have been recorded by the learned Judge of the trial Court for convicting the appellant under Section 302 IPC and as the learned counsel of the appellant has failed to dislodge them, the appeal should be dismissed.

8. This Court has heard Mr.U.S.Brahmbhatt, learned counsel of the appellant, and Mr.I.M.Pandya, learned Additional Public Prosecutor, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

9. The fact that deceased Prakasbhai Shriramnathbhai died a homicidal death is not disputed before this Court. The said fact stands amply proved by the testimony of Dr.Vinodkumar Gupta, who was examined at Exh.33. The suggestion made by the defence that the injuries noticed by him on the dead body of the deceased could have been caused in an accident, is emphatically denied by him. The evidence of witness Mohmed Aslam read with that of witness Abdul Razak and witness Ramsing Shankersing would show that the deceased had received knife injuries. The

cause of death of the deceased mentioned by the doctor before the Court is 'shock' which was result of injuries sustained by the deceased. The injuries sustained by the deceased are also mentioned in detail in inquest report produced at Exh.27A. The injuries are also mentioned in postmortem notes produced at Exh.34. On reappreciation of evidence, this Court finds that the learned Judge of the trial Court was justified in holding that it was proved by the prosecution that the deceased died a homicidal death. The said finding being eminently just, is hereby upheld.

10. In order to prove charge against the appellant, the prosecution has relied upon the evidence of mainly three witnesses. They are (1) Mohmed Aslam Mohmed Abbas; (2) Abdul Razak Mohmed Abbas; and, (3) Ramsing Shankersing.

10.1 The first two witnesses have been examined by the prosecution to prove oral dying declaration made by the deceased before them implicating the appellant. Witness Mohmed Aslam, examined at Exh.6, has narrated in detail as to how he had given his lorry to the deceased on rental basis. What is claimed by this witness before the Court is that on the day of incident, his door was knocked by his nephew at about 9.00 a.m. when he was preparing to retire to bed and he had learnt that the deceased was bleeding profusely. The witness has asserted before the Court that immediately he had gone to the place where the deceased was sitting on road opposite R.K. Transport Company and on inquiry being made, the deceased had told him that he was assaulted by the appellant. This witness has further stated that earlier the deceased had come to entrust the lorry with the goods to him and was accompanied by the appellant and he had instructed the deceased not to bring persons like the appellant who appeared to be a loafer. The witness has further maintained before the Court that after arrest of the appellant, he was summoned in the Courtroom of Executive Magistrate, Court No.1, where identification parade was held on December 12, 1996 and that he had identified the appellant as the same person who had earlier accompanied the deceased to his house.

10.2 Though this witness has been searchingly cross-examined by the defence, nothing could be brought on record to impeach his credibility. The suggestion made by the defence that he had no opportunity of seeing the appellant at any point of time, is emphatically denied by him. In his cross-examination also, the witness has maintained that he was knowing the appellant.

It is relevant to notice that the deceased was not related to this witness nor this witness had any interest in the deceased nor the witness was on inimical terms with the appellant. Under the circumstances, the witness has no reason to implicate the appellant falsely in such a serious case. It is also relevant to note that as per this witness, he had removed the injured to Shardaben Hospital for treatment in the rickshaw. The witness has clearly stated that while removing the injured to hospital, his clothes were bloodstained. The bloodstained clothes were produced by the complainant before the Police which were seized under a panchnama, which is on record of the case at Exh.22. Thus, witness Mohmed Aslam stands corroborated by other evidence on record. As noticed earlier, injured Prakash, who was then alive, was initially treated by Dr.Rakeshkumar. The injury certificate issued by Dr.Rakeshkumar is produced by the prosecution at Exh.42. In the said certificate, it is mentioned that the deceased was brought by witness Mohmed Aslam, witness Khatunbibi and witness Abdul Razak. Thus, the case of witness Mohmed Aslambhai that he in the company of his mother and brother had removed the injured to the hospital, stands amply corroborated by the medical evidence on record. No major improvements and/or contradictions appearing in his evidence could be brought to the notice of this Court by the learned counsel of the appellant. His testimony stands completely corroborated by the contents of FIR which is produced at Exh.38. The impression, which one gathers after reading the evidence of this witness, is that he is a witness of truth. Under the circumstances, this Court is of the opinion that the learned Judge of the trial Court did not commit any error in placing reliance on the testimony of this witness for coming to the conclusion that oral dying declaration made by the deceased before this witness stands satisfactorily proved and that the said dying declaration implicates the appellant in the murder of the deceased.

10.3 Similarly, the testimony of witness Abdul Razak recorded at Exh.8, would show that he is brother of complainant Mohmed Aslam and that the deceased was working on his lorry when he was selling eatables near the Railway Station. His evidence would further show that on learning that the deceased had sustained knife injury, he had approached him and on inquiry being made, he was informed by the deceased that the appellant had inflicted knife injury to him. It is relevant to notice that this assertion made by the witness on oath before the Court has almost gone unchallenged in his cross-examination. No major contradictions and/or improvements in the testimony of this witness with

reference to his earlier police statement could be brought to the notice of this Court by the learned counsel of the appellant. The testimony of this witness does not suffer from any infirmity whatsoever. It is relevant to notice that this witness has asserted in his testimony before the Court that he had noticed that the appellant was often visiting lorry which was being hawked by the deceased to meet the deceased and, therefore, he was knowing the appellant. This assertion could not be demonstrated to be untrue by the defence. Having regard to the trustworthiness of the testimony of witness Abdul Razak, this Court finds that the oral dying declaration sought to be proved through the testimony of this witness stands amply proved which, in turn, implicates the appellant in the murder of the deceased.

10.4 It is well settled that oral dying declaration if found to be trustworthy can be acted upon for the purpose of basing conviction under Section 302 IPC. In *Surendra Nath Mahton v. State of Bihar*, A.I.R. 1979 SC 1497, the appellant was convicted under Section 302 IPC and sentenced to imprisonment for life. The entire case rested on the dying declaration made by deceased Sukhu and the evidence of nine witnesses. Out of nine witnesses, two were near relations whose names were mentioned in FIR. The fact that the deceased made an oral dying declaration was also mentioned in the FIR. After going through the judgments of the Courts below, the Supreme Court found that no error of law was committed by the Courts below to warrant any interference in the appeal and the case against the appellant was concluded by findings of facts. Again in *Nelluri Subba Rao & Anr. v. State of A.P.*, A.I.R. 1979 SC 1513, the dying declaration was made by the deceased to her brother and his employer that she had been forcibly administered endrine poison by the appellants. It was found that the declaration was fully supported by the brother and his employer whereas chemical analysis disclosed that viscera did contain poison. The Supreme Court after placing reliance on oral dying declaration confirmed the conviction of the appellant under Section 302 IPC. Thus, judicial precedents on the point guide this Court that if the evidence tendered by the prosecution regarding oral dying declaration is found to be cogent, trustworthy and unblemished, it can be acted upon for the purpose of basing conviction under Section 302 IPC. As noticed earlier, the testimony of witness Mohmed Aslam and that of witness Abdul Razak is of sterling quality. The oral dying declaration made by the deceased before witness Mohmed Aslam is referred to in his FIR Exh.38. No infirmity in their evidence could be brought to the

notice of this Court. Therefore, oral dying declarations proved by the prosecution clearly implicate the appellant in the murder of the deceased.

10.5 On reappraisal of evidence tendered by these two witnesses, this Court finds that the case of the prosecution that the deceased had made oral declaration before these two witnesses implicating the appellant as his assailant is proved beyond pale of doubt and, therefore, the finding recorded by the learned Judge of the trial Court, who had advantage of observing demeanour of witnesses, on this count will have to be upheld and is hereby upheld.

11. The plea that in view of seriousness of injuries sustained by the deceased, the deceased must have been rendered unconscious and must not have been able to speak as a result of which the two dying declarations made by the deceased before the two witnesses should have been discarded by the learned Judge, is devoid of merits. The testimony of Dr. Rakeshkumar, who had initially treated the deceased, would show that at least for half an hour after the incident, the deceased was in a position to speak. Under the circumstances, the oral dying declarations made by the deceased cannot be disbelieved on the ground that the deceased must have been rendered unconscious on receipt of serious injuries.

12. Apart from the evidence tendered by the prosecution regarding oral dying declarations made by the deceased, the prosecution has also produced direct evidence regarding incident in question. According to the prosecution, part of the incident in question was witnessed by Ramsing Shankarsing, who was also selling eatables in his lorry near the lorry of the deceased. Witness Ramsing Shankarsing in his testimony, recorded at Exh.9, has mentioned that he was selling eatables in a lorry which he was keeping near the wall of Reservation Room of Railway Station. According to him, he was bringing lorry near the said wall about 9.00 a.m. and was returning home at about 9.00 to 10.00 p.m. What is mentioned by him before the Court is that other persons were also selling eatables in their lorries. The witness has mentioned before the Court that he is knowing Abdul Razak, who was initially selling eatables like bread and vegetables on his lorry and that the deceased was working on the lorry of Abdul Razak. The witness has further mentioned that because of steps taken the authorities of the Ahmedabad Municipal Corporation, Mohmed Aslam and Abdul Razak had stopped selling eatables in their lorries and that deceased Prakashbhai was thereafter selling

omelets in the lorry belonging to Abdul Razak. It is also mentioned by this witness that person named Rameshbhai (the appellant) was coming to the lorry of deceased Prakashbhai to meet the deceased and, therefore, he was knowing the appellant. After stating so, the appellant, who was present in the Courtroom, was identified by him. His testimony further shows that on the day of incident, deceased Prakashbhai was working on his lorry whereas the appellant was standing near him and that at about 8.45 p.m., the deceased had moved his lorry to go home, but had started running and was shouting for help and that he had seen that the appellant was chasing the deceased. It is further mentioned by the witness that he had noticed that the appellant was armed with bloodstained knife whereas the deceased was profusely bleeding from his body. What is asserted by the witness before the Court is that the appellant was uttering the words that the deceased had betrayed him and after overturning the plates kept in the lorry of the deceased, the appellant had run away towards the Railway Station.

12.1 Though this witness has been searchingly cross-examined by the defence, nothing could be brought on record to impeach his credibility. The witness in his cross-examination has correctly described the place as to where he was keeping his lorry and where the deceased used to keep his lorry near the Railway Station. Though it is mentioned by this witness in his cross-examination that at the time when shouts for help were raised by the deceased, he was busy selling farsan to customers, it is asserted by him that he had found that the deceased was bleeding profusely and that the appellant had bloodstained knife in his hand because both of them had passed in front of his lorry. It is also admitted by him that he had not made any attempt to intervene in the incident nor attempted to save the deceased or apprehend the appellant.

12.2 A fair reading of the testimony of this witness would show that he has narrated the incident in a natural manner without making noticeable exaggerations or embellishments. His evidence as such does not suffer from any infirmity at all. This witness is also neither related to the deceased nor on inimical terms with the appellant. Therefore, he would not involve the appellant falsely in serious case.

12.3 On reappraisal of evidence of witness Ramsing, this Court finds that it is proved by the prosecution that the deceased was running and shouting for help in bleeding condition and that he was being chased by the

appellants, who had bloodstained knife in his hand. The plea that late identification parade held was not in accordance with law and, therefore, benefit of doubt should be given to the appellant is merely stated to be rejected. A fair reading of the evidence of the three witnesses makes it clear that before the incident took place, the appellant was known to them. Their assertion that they were knowing the appellant before the incident inspires confidence of this Court. Even the learned counsel of the appellant has also fairly conceded that strictly speaking it was not necessary for prosecution to hold test identification parade. Even otherwise, the evidence led by the prosecution establishes that the appellant was arrested on November 25, 1996. After his arrest, the Investigating Officer had addressed a yadi dated December 9, 1996 to the Executive Magistrate requesting him to hold identification parade. The Executive Magistrate had informed the Investigating Officer that parade would be held on December 12, 1996. This is quite evident from the contents of Exh.29. The testimony of Mr.R.V.Gohil, who was Executive Magistrate recorded at Exh.28, read with contents of panchnama of identification parade produced on record at Exh.30 would show that all precautions as required by law were taken by the Executive Magistrate before holding the parade and that at the said parade, the appellant was correctly identified by complainant Mohmed Aslam and witness Ramsing Shankersing. The learned counsel of the appellant could not demonstrate before this Court as to how holding of the identification parade was defective. The evidence tendered by the prosecution regarding identification parade is trustworthy and inspires confidence of this Court which also implicates the appellant in the incident in question.

13. The net result of the above discussion is that it is proved by the prosecution that the appellant had inflicted injury on the deceased with knife and caused his murder. Dr.Gupta, who performed autopsy on the dead body of the deceased, has stated that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause his death. The conviction of the appellant, therefore, under Section 302 IPC cannot be regarded as erroneous or illegal. No ground is made out by the learned counsel of the appellant to interfere with the same in instant appeal. The appeal is, therefore, liable to be dismissed.

For the foregoing reasons, the appeal fails, and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the judgment

which is impugned in the appeal.

(J.M. Panchal, J.)

(M.C. Patel, J.)

Rajendra